

Wednesday, June 20, 2007

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Robert Michael Ross, 300683 (UT)

1-25-01, \$4,000.00 Tax, \$290.11 Failure to File Penalty, \$400.00 Late Payment Penalty

For Claimant: Robert Ross, Taxpayer

For Department: Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether claimant made a timely claim for refund for alleged overpayments of use tax paid on the purchase of the aircraft at a court-ordered public auction.

Whether claimant is entitled to a refund for the payments for which the claim was timely.

Whether relief from the penalties for failure to file a return or timely pay the determination is warranted.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the claim be submitted for decision.

Lion Transportation, Inc., 254363 (UT)

3-28-01, \$5,298.00 Tax, \$529.80 Failure to File Penalty

For Petitioner: Joyce Comino, Accountant

Grigor Marsikyan, Taxpayer

For Department: Christine Bisauta, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether use tax applies to petitioner's purchase of a 2000 Model No. FLD132 Freightliner truck.

Whether petitioner has shown reasonable cause for relief from the penalty for failure to file a tax return.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Mitchell Margaretich, 338667 (UT)

5-21-01, \$9,300.00 Tax

Richard F. Gallagher, 261496 (UT)

5-21-01, \$9,300.00 Tax

For Petitioner: Mitchell Margaretich, Taxpayer

Richard Gallagher, Taxpayer

For Department: Christine Bisauta, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is personally liable for use tax on the purchase of the vessel.

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Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petitions be submitted for decision.

California Sushi Kitchen, LLC, 301275 (AS)

1-1-01 to 7-17-04, \$19,782.69 Tax, \$560.70 Failure to File Penalty

For Petitioner: Richard T. Baum, Attorney

For Department: Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner's sales of cold food consumed in a common area were taxable because sold for consumption at facilities provided by petitioner.

Whether petitioner has established reasonable cause to abate the failure-to-file penalty.

Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Quality Pallets, Inc., 296290 (EH)

10-1-01 to 9-30-03, \$15,608.29 Tax, \$1,702.20 Negligence Penalty

For Petitioner: Juan Guzman, CPA

Elias Melchor, Taxpayer

For Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether an adjustment to the audited measure of disallowed claimed nontaxable sales for resale of pallets is warranted based on errors in the audit methodology or based on certain tested transactions having been incorrectly disallowed.

Whether petitioner was negligent in reporting sales tax.

Action: Mr. Leonard moved that the petition be returned to the district for a reaudit. The motion failed for lack of a second.

Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Richard Harry Bjelland and Ronald Charles Sheets, 288775 (EH)

4-1-00 to 6-30-03, \$9,240.84 Tax, \$1,879.87 Negligence Penalty

For Petitioner: Richard Bjelland, Taxpayer

Jason List, Witness

For Department: Sandy McCaleb, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether further adjustments to the audited measure of unreported taxable sales are warranted.

Whether petitioner was negligent.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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The Board recessed at 11:40 a.m. and reconvened at 1:30 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Jalal Odish Zora, 203824, 203825 (FH)

5-1-99 to 6-30-01, \$17,009.91 Tax, \$1,701.00 Negligence Penalty

7-1-98 to 6-30-01, \$21,246.04 Tax, \$2,124.63 Negligence Penalty

For Petitioner: Martin Schwartz, Enrolled Agent

For Department: Sandy McCaleb, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether, for Bonsall Liquor, adjustments are warranted to the beginning and ending inventory amounts.

Whether, for Corner Liquor, adjustments are warranted to the audited taxable sales to account for merchandise transferred to another store and a lower markup.

Whether the negligence penalties apply to both determinations.

Action: Upon motion of Ms. Steel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Loren M. Hicks and Victoria E. Hicks, 265749 (UT)

1-22-02, \$10,071.00 Tax

For Petitioner: Loren Hicks, Taxpayer

For Department: Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioners purchased the subject motor home for use in California.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Michael Leonard Owen Fitzpatrick, 272196 (EH)

10-1-99 to 1-2-03, \$1,020.29 Tax

For Petitioner: Eileen Fitzpatrick, Taxpayer

For Department: Robert Stipe, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner received, and reasonably relied upon, erroneous written advice from the Board, and is entitled to relief.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Limerick's Irish Pub & Feastery, 285907 (EAB)

4-1-00 to 3-31-03, \$22,582.79 Tax

Michael O'Toole, et al., 272348 (EA)

4-1-00 to 3-31-03, \$21,436.78 Tax

For Petitioner:

David Copley, Taxpayer

Eric Johnson, Taxpayer

Michael O'Toole, Taxpayer

For Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the audited understatement of reported taxable sales.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Robert Ingram, 260330 (EH)

10-1-00 to 3-31-01, \$29,660.00 Tax, \$1,093.00 Failure to File Penalty

For Petitioner:

Robert Ingram, Taxpayer

Dennis G. Phillips, Enrolled Agent

Bruce Latta, Witness

For Department:

Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is personally liable for the unpaid tax liability of Desert Classic for the period October 1, 2000, through March 31, 2001.

Whether an adjustment should be made to the tax liability amount.

Whether petitioner has established reasonable cause to provide relief from Desert Classic's failure-to-file penalty.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

FMF Racing, 295383 (AA)

1-1-00 to 12-31-02, \$22,859.76 Tax

For Petitioner:

Gerald P. Castillo, CPA

Brian Mchale, General Manager

For Department:

Robert Stipe, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that unreported withdrawals of merchandise from inventory are not subject to use tax.

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Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner and the Department 60 days (or more if needed) to work together to provide the Appeals Division with each parties' respective position, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Thomas Vu, 309419 (AS)

4-1-00 to 3-31-03, \$69,127.27 Tax, \$6,912.74 Negligence Penalty

For Petitioner:

Thomas Vu, Taxpayer

Don Le, CPA

For Department:

Sandy McCaleb, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the audited amount of disallowed claimed nontaxable sales for resale.

Whether petitioner was negligent.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JUNE 20, 2007

Robert Michael Ross, 300683 (UT)

Final Action: Ms. Steel moved to deny the claim, but delete and refund the failure to file penalty. The motion was seconded by Mr. Leonard but failed to carry. Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the claim be denied as recommended by the Appeals Division.

Lion Transportation, Inc., 254363 (UT)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be granted, and the tax be redetermined accordingly.

Mitchell Margaretich, 338667 (UT)

Richard F. Gallagher, 261496 (UT)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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California Sushi Kitchen, LLC, 301275 (AS)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Quality Pallets, Inc., 296290 (EH)

Final Action: Mr. Leonard moved that the petition be returned to the district for a reaudit. The motion was seconded by Ms. Steel but failed to carry. Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Richard Harry Bjelland and Ronald Charles Sheets, 288775 (EH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered an adjustment for three vehicles (a GMC Yukon and two Fords), otherwise redetermined as recommended by the Appeals Division.

Loren M. Hicks and Victoria E. Hicks, 265749 (UT)

Final Action: Ms. Yee moved to redetermine as recommended by the Appeals Division. The motion was seconded by Ms. Chu but failed to carry, Ms. Yee and Ms. Chu voting yes, Mr. Leonard and Ms. Steel voting no, Ms. Mandel abstaining.

The Board deferred consideration of this matter to the next day.

Michael Leonard Owen Fitzpatrick, 272196 (EH)

Final Action: Ms. Chu moved that the petition be redetermined as recommended by the Appeals Division. Mr. Leonard made a substitute motion to abate the amnesty penalty, otherwise redetermine as recommended by the Appeals Division. The substitute motion was seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel abstaining.

Limerick's Irish Pub & Feastery, 285907 (EAB)

Michael O'Toole, et al., 272348 (EA)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARING

Hair Touch, 281210 (AC)

4-1-00 to 3-31-03, \$39,106.97 Tax, \$3,910.69 Negligence Penalty

For Petitioner: No Appearance

For Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Issues: Whether adjustments should be made based on a lower markup and lower amounts of merchandise purchases.
Whether the 10-percent penalty for negligence was properly imposed.
Action: The Board granted the request for postponement.

The Board adjourned at 4:35 p.m.

The foregoing minutes are adopted by the Board on August 14, 2007.

Note: The following cases were removed from the calendar prior to the meeting:
G. P. Resources, Inc., 262777 (AA); Center for Bio-Ethical Reform, 271792 (UT); Digby Industries, Inc., 239664 (EH); and, Southridge Auto Brokers, Inc., 254669 (EH).